IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 306 OF 2002

1. Mr. Babaji Sakaram
   Kalshaonkar, major of
   age, married, Indian
   National, r/o Bhaidawada,
   Korgao, Pernem, Goa, and

2. Mrs. Chandravati Babaji
   Kalshaonkar, major of age,
   married, Indian National,
   r/o Bhaidawada, Korgao,
   Pernem, Goa. .. Petitioners.

Versus

1. The Administrative Tribunal
   Panaji, Goa,

2. Dy. Collector, Bardez,
   Taluka, with office at
   Collectorate Bldg.),
   Mapusa, Goa,

3. Dr. Susan Szilagyi Lad,
   through her attorney
   Uday Dattaram Prabhu Desai,
   r/o Bhaidawada, Korgao,
   Pernem, Goa, and

4. The Joint Mamlatdar of
   Pernem, Pernem, Goa. .. Respondents.

Shri N. Costa Frias, advocate for the petitioners.

Shri A. D. Bhobe, advocate for respondent no.3.

CORAM : F. I. REBELLO, J.

DATE : 4th July, 2003.

ORAL JUDGMENT

The petitioners by the present petition impugn the Orders of the Deputy Collector, Bardez, dated 20th February, 2001, and the Administrative Tribunal in Tenancy Revision Application No.34/2001 dated 12th September, 2002, whereby the declaration of tenancy obtained by the petitioners herein

against Miss Hemalata Anant Laad and Miss Sudha Anant Laad by the Judgment and Order dated 27th April, 1995, has been set aside. The petitioners also impugn the consequential order granted by the second respondent, as confirmed by the third respondent, restraining the petitioners herein from interfering with the suit plot surveyed under survey no.404/0 of Korgao village, Pernem, till further orders.

2. A few facts may be set out. The petitioners claim to be tenants of the agricultural land and consequently deemed owners by virtue of the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. Their application initially came to be filed against Miss Hemalata Anant Laad and Miss Sudha Anant Laad. The matter proceeded ex parte against the said two respondents. The evidence of the petitioners herein was recorded and the declaration came to be passed in favour of the petitioners herein.

3. In the meantime, a suit came to be filed in the name of the deceased husband of the respondent no.3, by his power of attorney Uday Dattaram Prabhu Desai being Special Civil Suit No.176/98/I/SR. In that suit the motion was taken out for granting interim relief. Injunction however, was rejected. An appeal came to be preferred against the said Order, in which appeal the Order of the trial Court was set aside and the injunction was granted. The revision preferred before this Court was rejected. Petitioners preferred

Special Leave Petition before the Apex Court, by which time, it is the case of the petitioners that they came across the death certificate of Anant Laad, who had expired on 9th September, 1989. The Apex Court while disposing of the Special Leave Petition directed the petitioners herein to move an application before the trial Court by producing the documents and praying for consequential directions. The petitioners accordingly moved that application and pursuant to that an order came to be passed on 12th September, 2000, whereby the suit of the plaintiff was dismissed.

It is after that that the tenancy appeal came to be preferred by the respondent no.3 herein, through her power of attorney, which appeal came to be allowed by the impugned Order.

4. At the hearing of this petition, on behalf of the petitioners, learned counsel contends as under:-

(i) That the declaration was obtained against the sisters of the late Bhagvant Anant Laad, who were not made parties by the present respondent no.3 in the appeal preferred by her against the petitioners. The appeal, therefore, was not properly constituted and in these circumstances, no order could have been passed setting aside the declaration in

favour of the petitioners;

(ii) That the appeal was delayed by several years. The Appellate Court ought to have first disposed of the application for condonation of delay. That was not done and, consequently, also the order suffers from error apparent on the face of the record. Reliance was placed in this connection on the judgment of the Apex Court in **Gagandeep Pratishthan Pvt. Ltd. & Ors. vs. Mechano & Anr., (2002) 1 SCC, 475;** and

(iii) That the Deputy Collector would have no jurisdiction to grant injunction against the petitioners in proceedings under the Tenancy Act initiated by the petitioners herein. It is submitted that the provisions of Order 39 Rule 1 C.P.C. would not apply and the order granting injunction would be without jurisdiction and consequently, liable to be quashed and set aside.

5. We may first consider the issue as to non-joinder of the sisters. In the first instance the

respondent no.3 preferred the appeal on the ground that the sisters had no right to the property and on the contrary respondent no.3 would be the person aggrieved by the declaration in favour of the petitioner. In these circumstances the appeal at the behest of a person aggrieved would be maintainable. It is only in the event the sisters of Laad had claimed any right in themselves that they would be either necessary or proper parties before the Deputy Collector or the appellate authority for that authority not to exercise its jurisdiction. In the instant case, the suit was filed against the respondent by the late Laad on the ground that he was the exclusive owner and the appeal was by his widow. In these circumstances, in my opinion, it cannot be said that the appeal was not properly constituted. It will, however, still be open to the petitioners herein to raise those issues before the Mamlatdar, if in law they are so entitled, to get the said issue decided. The order has been set aside on the sole ground that the respondent no.3 herein who claims right to the property, was not heard in those proceedings. The sisters continue in the said proceedings. It will be for the respondent no.3 herein to show her right to the property. At any rate it is not necessary to go into the controversy as to on whom the onus would lie and as to whether a declaration could be granted in favour of the petitioners. All these questions are left open for decision before the Mamlatdar.

6. The next issue is the second contention that the application for condonation of delay was not considered. The order of the learned Appellate Tribunal would indicate that it has so considered, may be not in the manner in which it ought to have been considered, by a civil court. The matter was in issue before the Administrative Tribunal which has chosen not to interfere with the said finding recorded by the appellate forum. In order to interfere with the said finding the petitioners must make out a case of error apparent on the face of the record, or an error of jurisdiction. It was within the jurisdiction of the Appellate Tribunal to condone the delay. It has so done. It is merely an appreciation of evidence on affidavit before it. The order condoning delay therefore, would not suffer from any error apparent on the face of the record.

In **Gagandeep Pratishthan Pvt. Ltd. & Ors. vs. Mechano & Anr.** (supra), the Apex Court noted, that the interim order was passed by the High Court without deciding an application for condonation of delay. It is in those circumstances that the order came to be passed by the Apex Court directing the trial Court to first dispose of the application for condonation of delay. In the instant case, the delay has been condoned, after considering that question. On facts and circumstances, therefore, it would not be proper for this Court and more so after the revisional tribunal has confirmed the said order, to interfere with the said finding.

At any rate, the order does not suffer from any error apparent on the face of the record.

7. We come to the last contention, namely issue of grant of injunction. The Tribunal could assume jurisdiction on an application moved before it, by a person claiming to be a tenant. The Act itself provides for certain reliefs at the intance of the tenant against the landlord. Contrary there is no provision for a negative declaration, nor for an injunction by a purported landlord contending that the applicant is not a tenant. Even before a civil court, injunctions at the instance of a defendant are in those cases contemplated by the provisions of Order 39 Rule 1 C.P.C., where a defendant also can claim injunction in respect of waste, damage, etc. to the property. Factually that was not the case here and it would not be covered by the provisions of Order 39 Rule 1 C.P.C. assuming Order 39 Rule 1 C.P.C. was attracted. Even otherwise, considering that this was an application for declaration by the petitioners herein, the appellate authority could not have assumed jurisdiction to grant injunction in favour of the respondent herein, which otherwise the authority under the Tenancy Act could not have granted in favour of a person not claiming to be landlord under the Tenancy Act. It is the case of the respondents that the petitioners are not tenants and in these circumstances, the proper forum would be the civil court and not the Mamlatdar. The existence of jurisdiction before the

Mamlatdar to grant injunction is the existence of a relationship of a landlord and tenant. That jurisdiction cannot be exercised at the instance of a party who denies the relationship of landlord and tenant. Clearly therefore, the order granting injunction would be without jurisdiction. Hence that order of the Appellate Court as confirmed by the revisional Court would have to be set aside.

However, in the instant case there has been injunction operating in favour of the respondent against the petitioners earlier in the proceedings taken out by the deceased husband before the Civil Court and subsequently by the Appellate Court under the Tenancy Act. In these circumstances, it would be just and proper that the injunction granted be continued in the larger interests of justice for a further period of eight weeks from today. On the expiry of the said period the injunction will cease to operate unless the civil court on hearing the parties decides to grant injunction.

8. In the light of that the following Order:-

Rule made partly absolute to the extent that the Orders of the Appellate Court and the Revisional Court granting injunction are set aside. It is made clear that while disposing the proceedings the Mamlatdar would not be influenced by any observations/notings made by the Appellate

Court and the Revisional Court and decide the matter based on the evidence as it emerges. In the circumstances of the case there shall be no order as to costs.

F. I. REBELLO,J.

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